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# **Tracking of Participants In the Commercial Law Programme, 2009- 2010.**



**Researched for the  
International Senior  
Lawyers Project  
(ISLP)**

This report was compiled and produced for the International Senior Lawyers Project (ISLP), by the Community Agency for Social Enquiry (CASE)

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# 1. APPROACH TO THE STUDY

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## 1.1. INTRODUCTION

In 2003, the International Senior Lawyers Project (ISLP) responded to a call for assistance in response to the growing need for expert legal training in Commercial law, specifically for previously disadvantaged professionals. To address this matter, the ISLP in a joint venture with the Black Lawyer's Association's Legal Education Centre (BLA-LEC's) and other key stakeholders have been conducting a commercial law course since 2004. Typically, Commercial Law practitioners from the United States and Canada, recruited by the ISLP, serve as programme instructors along with South African co-instructors. In some instances, South African instructors recruited by the BLA-LEC, serve as the sole instructors for certain classes. Applicants who hold a law degree and have two years experience in practice are considered for participation. Preference is usually given to lawyers from historically disadvantaged backgrounds.

Since 2004, the nine-week course has been conducted annually in the Western Cape, Kwazulu-Natal, and Gauteng province. The purpose of the course is to equip interested attorneys with the skills required to succeed in the commercial environment. According to the BLA-LEC:

*“the purpose of the program was to meet an immediate need for affordable training and mentoring in commercial law subjects for black South African lawyers, promoting the successful participation of black South African professionals in the economic and professional life of their society, as well as their development as leaders in the community”.*

In 2004 and 2008, the C A S E conducted tracking exercises of the Commercial Law programmes, for the respective periods. In both the previous exercises, the broad objective was to assess whether the Commercial Law course was successful in meeting the ‘immediate need’ of black lawyers as outlined above. Based on the results from both these studies, designers of the course were able to restructure the course, so that it better fit the needs of participants in terms of the skills and knowledge they require. This study however, seeks to go beyond the two previous exercises, by assessing whether the course fulfils its latter objective which is the

successful participation of black professionals in the economic and professional environment in which they function. In its broadest sense, this research project is concerned with the impact that attending the course has had on black legal professionals' careers.

In 2009 and 2010 two separate courses, level one for those with little or no commercial law experience, and level two for graduates of level one and those who have significant commercial law experience, were presented. This report presents the findings of the study undertaken by the Community Agency for Social Enquiry (C A S E) for a tracking exercise of participants in the Commercial Law Programme from 2009-2010, at both levels one and two. It also includes instructors' views on the course.

The objectives for this study are as follows:

- Assess perceptions of the impact of the course on participants' knowledge of Commercial Law.
- Assess the impact of the course on the ability of the participants to advise clients on Commercial Law topics.
- Evaluate how useful the course has been in terms of participants' legal careers.
- Evaluate perceptions of the participants about opportunities for and obstacles to building a Commercial Law practice.
- Identify and investigate examples of successes of the programme.

### ***About the C A S E and the authors of this report***

The Community Agency for Social Enquiry (C A S E) is a leading South African research NGO, focusing on socio-economic and policy research in support of social and economic justice. Established in 1985 and operating nationally, C A S E has staff members and offices in Gauteng and the Western Cape. C A S E undertakes national, provincial and local surveys, focus groups, project and organisational evaluations, programme impact assessments, and policy and literature reviews.

Querida Saal, a researcher at C A S E, was the primary researcher for this project. She completed her Bachelors degree at Stellenbosch University, majoring in Political Science and Economics, in 2007. In 2008 and 2009, she completed an Honours and a Masters degree respectively, both in Political Science. Her Masters dissertation focused on the obstacles that prevent poor women, living on farms in the Western Cape, from optimal political participation.

Her areas of interest are Public Policy Analysis, Participatory Democracy, Community Development, and Gender Issues. Previous projects she worked on include:

- *Assessing Service Delivery by the National Prosecuting Authority (NPA), (current)*. Commissioned by the Department of Justice and Constitutional Development.
- *Assessment of Community Development Workers Programme (CDWP), (current)*. Commissioned by the Department of Local Government and Housing.

Mohamed Motala, the executive director of C A S E, supervised and also worked on the project. He has extensive experience in public policy formulation, management, monitoring and evaluation supported by strong research and writing skills. Having worked at a senior level in both the Public and Development sector Mohamed has developed strong conceptual, management and planning skills. This has come about through twenty two years working experience ranging from community development to management of national programmes, trade unions, government departments, research and teaching.

He is a qualified town and regional planner that have taught public policy at the Graduate School of Public and Development Management at the University of the Witwatersrand where he was the head of the Public Policy and Governance learning area. Here he taught and supervised masters level students within the areas of public policy and service delivery. Prior to that he has worked as a director in the National Department of housing, and the provincial department of housing in the Eastern Cape He has also worked with communities in informal settlements around their housing needs.

Apart from having overall responsibility for the entire organisation especially around strategy and sustainability he is also directly involved in the organisations research projects where he undertakes research and provides support to other researchers. Mohamed holds three degrees from the universities of Durban Westville and Natal.

## **1.2. METHODOLOGY**

In order to address the objectives above, C A S E conducted in depth interviews with a selected group of participants and course examiners who participated in the course during 2009-2010 in Johannesburg. The course targets previously disadvantaged individuals and in the South African context, this refers to black people. In this study black commercial lawyers referred to are in the South African racial classification system, Africans, Coloured and Indian attorneys.

The design of the study constituted a small number of in depth interviews that were conducted with course participants and instructors. The design was agreed upon with the client and C A S E was requested to work within a very limited budget and timeframe. The study was to be concluded within a period of four weeks. It was not possible to interview all the participants and neither was it possible to carry out a representative sample survey with which we could generalise the findings. The availability of the delegates also restricted the design of the study which resulted in it being limited to in depth interviews.

A random sampling method was employed in selection of participants to be interviewed. The sample was drawn using contact lists provided by the BLA-LEC of all participants who attended the 2009 and 2010; both level 1 and level 2 courses.

### **Phase 1: In depth interviews with Course participants**

Participants were divided into two groups according to their participation in the different levels in the two years. All participants who participated in 2009 and 2010 in level one were grouped in one category and those who participated in level two, 2009 and 2010, were grouped in another category. Participants were then listed in no particular order on an excel spreadsheet, whereby a number was assigned to each person. These numbers were then listed in ascending order after which the first five participants on the list were randomly selected as persons to be interviewed.

Starting at the top of the lists, four participants were selected from each group with whom in-depth interviews were conducted, ensuring that both 2009 and 2010 participants were included for each level. Hence, a total of eight in-depth interviews were conducted with a sample of delegates from both levels. If for any reason this participant was not able to participate in the research, she or he was substituted with the next person on the list.

## **Phase 2: In-depth interviews with Course examiners**

In this stage of the research, we conducted three in-depth interviews with instructors, one with the developer and examiner of the final examination paper for both levels and the remaining two with individual instructors who have contributed significantly to the program. The purpose of these interviews was to gain an understanding of the impact of the course on participants' knowledge of Commercial Law. In designing the study, we felt that it would only be the examiners who would be able to reflect on the extent to which participant's knowledge has increased. Ideally this would have been tested in the form of an assessment that the course participants would have had to go through. All three instructors were suggested to us by the BLA-LEC reference group on the bases that they have been involved in the course from its inception, in 2004. They are therefore more likely to have a better understanding of the impact it has had on participants' level of knowledge and in the field of commercial law.

## **Phase 3: Development of case study showing example of a success story**

Data gathered from the in-depth interviews with both the course participants and course examiners was then analysed. Based on this analysis, one example of a success story from the level two 2010 group was identified. As it will take some time for attendance of the course to have an impact on participants' careers, it is more likely that participants in the 2010 cohort would have experienced an impact. This is because most of the 2010 level 2 participants also attended the 2009 level 1 course, and also because they were probably more interested in pursuing a career in commercial law.

In summary, a total of 11 in-depth interviews were conducted, 8 with participants and 3 with course instructors. One participant was identified as an example of a success story of the course. A case study analysis for this respondent is provided. In the course of the research, we had to substitute the initial respondents selected four times, all of the substitutes were in the 2009 cohort. This was mainly because contact details for the initially selected respondents were not available. One respondent was substituted as work commitments prevented her from participating in the research within the timelines provided.

An in-depth interview guide was designed for the research, in consultation with the client and the BLA-LEC reference group. All the interviews were conducted telephonically with attorneys in Johannesburg. In all cases but one, where the respondent filled out the questions himself,



interviews were electronically recorded and transcribed for purposes of thematic analysis. Participants were assured of their right to refuse participation in the study and their right to anonymity and confidentiality. Findings from interviews conducted with eight South African legal professionals and three instructors are reflected in this report.

It should also be emphasised that this study is not representative of the views of the general South African legal profession, but it provides a relatively good indication of the existing patterns in terms of the impact the Commercial Law course has had on participants' legal careers. The table below provides a brief profile of the participants interviewed.

### Profile of Participants and Instructors Interviewed

Participants						
	Gender	Race	Age	Institution Graduated from	Year Graduated	Current Position
1	Male	African	31	University of Venda	2002	Contracts Manager
2	Male	African	-	Unisa	2007	Documentation Officer
3	Female	African	32	University of Pretoria	2006	Conveyancer
4	Male	African	38	University of Limpopo	2006	Course Manager
5	Female	Indian	30	University of Durban Westville	2004	Legal Cost Officer
6	Female	African	-	-	-	Conveyancer
7	Male	African	30	University of the Western Cape	2002	Owner/ Managing Director
8	Male	Indian	40	UNISA	2000	Owner
Instructors						
1	Male	Coloured				Director
2	Female	White				Partner
3	Female	White				Partner

- Missing Information

**Table 1: Profile of Participants and Instructors Interviewed**

## 2. FINDINGS

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In this section, the findings of the research in terms of the perceptions of participants and instructors regarding the impact of the Commercial law course for both level one and two is presented. Views and experiences are expressed regarding the following themes:

- Perceptions of the impact of the course on participants' knowledge of Commercial Law.
- The impact of the course on the ability of the participants to advise clients on Commercial Law topics.
- Usefulness of the course in terms of advancing the participants' legal careers.
- Perceptions of the participants about opportunities for and obstacles to building a Commercial Law practice.
- Finally, a case study analysis of one example of a success story of the programme is presented.

### **2.1. PERCEPTIONS OF IMPACT ON PARTICIPANTS**

#### **KNOWLEDGE OF COMMERCIAL LAW**

All the participants interviewed strongly believe that attending the course has had a significant impact on their knowledge of commercial law. They unanimously profess to now have a much broader knowledge base and a better understanding of issues of commercial law. As a result, they also tend to feel more confident in their ability to express themselves knowledgeably on issues of commercial law. Overwhelmingly participants also note that before they attended the course, they tended to view commercial law as a complex subject, one they would be unable to engage with effectively. Attending the course has significantly altered this perception. The following quotes illustrate this.

*Before attending the course I didn't know how to pick up a risk in a contract. But now, after I have attended the course I know where to start when I want to draw up a contract, where to research particularly when it comes to commercial issues. I have gained a lot of knowledge.*

-Male Contracts Manager, Level 1 2010.

*It used to be a very complex and difficult field, but after attending the course I have realised that there is nothing difficult there. It just needs more understanding. In actual fact, we are involved in commercial transactions on a daily basis but I didn't know that those activities are commercial transactions. But now that I have attended that course, it has actually opened my knowledge in as far as that is concerned. I view it not to be a difficult subject right now.*  
-Male Contracts Manager Level 1 2010.

However, a distinction is made between the extent to which what is presented at level one and level two respectively impacts on the value participants get out of the course. According to those interviewed, level one is much more theoretical and it encompasses the fundamental basics of commercial law. Participants note that when one has no knowledge of commercial law at all, having an opportunity to learn the theory certainly is useful. However, participants who have some knowledge about commercial law, although not enough to continue to level two, expressed some frustration with the theoretical nature of level one, noting that they did not find it sufficient for their needs. It was only by attending level two, that they gained the knowledge and expertise necessary to apply what they had learned in the course. In essence, most participants view level two as a whole lot more informative and gained much more out of attending this course than level one. However, both participants and instructors note that the two levels are complimentary. This is also linked to the time between the two levels, when participants are able to apply the knowledge they have gained in the first course, as noted by an instructor:

*I think they had the benefit of level one and then they have the whole year of applying the knowledge and they actually look at documents differently. There is definitely a difference between the level of experience and comprehension of how they view documents if you compare level one and level two.*  
-Female Instructor 1, Level 1 & 2 2009-2010.

Significantly, some participants note that before attending the course, they were unable to fully comprehend issues of commercial law presented in print, for instance newspaper and journal articles. Two respondents noted rarely having read such articles before attending the course, mainly because they could not understand the jargon. After attending the course, they note that they now regularly read such articles and fully comprehend what is being said.

In terms of instructors, participants had much praise for the foreign instructors, noting that they made a significant contribution to the quality of knowledge acquired during the course. The foreign instructors are described as very energetic, passionate about commercial law, and approachable to most participants. The general perception is that they add value to the program in that they bring a wealth of practical knowledge with them. This is mainly due to the fact that they tend to have many years of experience in the field. For example, one participant indicated:

*I feel that the foreign instructors added the body to the skeleton. They were very prepared and passionate about what they were teaching; they made sure that you understood at the end of the day and they were very approachable. They made it seem like commercial law is flexible (sic).*  
-Female Conveyancer, Level 1 2009.

However, participants noted that the value one is able to gain out of a specific presentation also depends on whether the foreign and local instructors who co-present have good synergy. For instance, one respondent noted that in some classes the local instructor tended to say very little, leaving the foreign instructor to dominate the presentation. The result was that one tended to get more of a foreign perspective as opposed to a more balanced idea of the practical realities of the South African commercial law environment. Although most participants value the fact that they do not only get a South African picture of commercial law, they do note that more emphasis should be on the local perspective.

## **2.2. IMPACT OF COURSE ON THE ABILITY TO ADVISE CLIENTS**

All participants interviewed said that they are now better able to advise clients on issues of commercial law. They ascribe this to the perception of themselves as more informed and knowledgeable on the topic. Not only that, but they tend to be more confident in their ability to deal with clients and give sound advice in terms of commercial law. Due to increased confidence levels, they do not have to spend as much time doing research or seeking guidance from more experienced persons as before. One respondent noted that attending the course and the knowledge she gained there, gave her the confidence to approach her superiors for more work in this field. She has since been given one client and she feels adequately prepared and confident in her ability to assist this client, without constantly having to refer back to her superiors.

*Yes, and to a point where you feel confident enough to actually go about it on your own without any assistance.*

*-Female Conveyancer, Level 1 2009.*

Another participant noted that before he attended the course, he found it challenging to explain certain concepts of commercial law to clients. This he argues is due to the fact that he only had theoretical knowledge based on his LLB-training. After attending the course, he finds it much easier to unpack such concepts and advise clients on the best way to deal with commercial law issues.

Finally, one participant had the following to say about the impact attending the course has had on his ability to advise clients:

*I manage contracts and in some cases I have to advise the organisation on whether we should proceed with them or whether we should renew it etc and also in terms of corporate law. I am very much equipped and right now I am able to work for a very big organisation. I don't have a problem in terms of giving advice.*

*-Male Contracts Manager, Level 1 2010.*

## **2.3. USEFULNESS IN TERMS OF PARTICIPANTS' LEGAL CAREERS**

Although most participants feel invigorated about commercial law after attending the course, none of them experienced a significant impact on their careers, in terms of moving into or applying for a job in the field. Also, none of the participants interviewed seemed to have actively tried to make any significant career changes towards commercial law. In addition, some participants do not even practice in the field and still remain in their positions that they were in before attending the commercial law course. However, those who do practice commercial law, note that they are applying what they learned in the course on a daily basis.

*You know, I am still a Conveyancer, but obviously you can foresee that in future it would probably have an impact. And as time goes by you might be able to attract more work, you might be able to attract more expertise, but so far not really. Personally it has enhanced my confidence in that area. Professionally I am still where I was before.*

*-Female Conveyancer, Level 1 2009.*

It is important to note though, that quite a few of the participants either attended the course to broaden their knowledge on commercial law, because they have a keen interest in the subject, or because they want to stay informed about developments in the field. Thus, not all respondents necessarily envisioned the commercial law course having a significant and immediate impact in terms of their career. As a result, most participants interviewed have not tried to move into the field of commercial law as yet, but they do plan to do so in future. These participants also tend to feel that despite attending the commercial law course, there is a need for them to acquire the practical skills through experience in the field first, before they embark on the process of building their own law firms.

One participant said that he did attempt to break into the field of commercial law after attending the course, but he failed because he could not find an institution interested in his services. Apart from that, he is one of the few who attempted to open his own commercial law firm, but he was unsuccessful in this also as he did not receive any commercial law instructions from firms in the field. This same participant's response to the reasons why attending the course did not have

any effect on his professional career at all best encapsulates the general feeling of most participants:

*South Africa is a country which still perceives commercial law as the preserve of the white minority. This cannot be ascribed to the programme; it is a societal issue.*

*-Male Course Manager, Level 2 2009.*

Hence, despite the knowledge most participants feel they gained and the value they add to the programme, the general perception is that broader societal realities do not allow for black commercial lawyers to enter the field readily or even start their own commercial law firms. This is an indication that even though the commercial law course may be succeeding in its goal to expose black legal professionals to commercial law, participants are often not able to extrapolate and practically implement the knowledge they have gained in the course. There is thus a need for designers of the Commercial law course to be cognisant of the broader realities in the field and perhaps to provide assistance to black lawyers wanting to enter the field to overcome these obstacles.

One way in which the course did seem to be useful for most participants, is by linking them up with other professionals in the field. One respondent referred to the business contacts he made whilst attending the course and indicated that this has been very useful in his career. He also noted that he felt inspired by some of the black instructors who shared their stories about how they managed to attain high success in the field of commercial law. Some of these instructors opened their own commercial law firms and others managed to become equity partners in large established white-led firms. According to him, and this sentiment was echoed by various other participants, these instructors serve as examples that despite the many difficulties and obstacles black lawyers face in attempting to penetrate the field, with hard work and perseverance it is possible.



## **2.4. PERCEPTIONS ABOUT OPPORTUNITIES FOR AND OBSTACLES TO BUILDING A COMMERCIAL LAW PRACTICE**

### **2.4.1 Opportunities to Building a Commercial Law Practice**

#### **2.4.1.1 Awareness of Opportunities**

There seems to be a two-way split in terms of the level of participants' awareness of opportunities to building one's own commercial law firm. About half of the participants interviewed are not aware of any opportunities to building a commercial law firm for black lawyers. Significantly though, these participants note that the fact that they are unaware of opportunities in this regard does not necessarily mean that there are not any out there. It is perhaps only an indication that these opportunities are not marketed well. Those participants who are unaware of opportunities in the field also tend to be more positive in terms of how they will fare should they decide to open their own firms.

The other half of the participants interviewed, strongly feels that there are no opportunities for black lawyers wanting to start their own commercial law firms. This is attributed mostly to breaking into the field being so hard, whether it is to secure a job in an existing commercial law firm or to open one's own law firm. Explanations given for this notion are discussed in the latter part of this section which deals with the obstacles to starting a commercial law firm.

The argument made above is in stark contrast to one of the white instructor's notions that there is a wealth of opportunities for black commercial lawyers in the field.

*I think there are enormous opportunities, fantastic opportunities for black commercial lawyers in the country. If you are a black lawyer and you have commercial law experience, I think you have the world as your oyster. And I would think what an enormous opportunity it is to develop a practice in South Africa.*

*-Female Instructor 2, Level 1 &2 2009-2010.*

Interestingly enough, all the participants interviewed said that they have considered opening their own commercial law firms, yet only two however have actually managed to do so. These two participants do stress that breaking into the field is extremely difficult and that it is much more so for a black lawyer attempting to start her or his own commercial law firm. According to one of these participants, the few black-owned commercial law firms in the field are barely getting by. Although he is not sure how, he argues that somehow everybody is getting some work to survive. Another respondent noted that progression of these firms are very slow, primarily because corporate companies would rather give instructions to the larger more established white owned firms.

#### **2.4.1.2 Equal Opportunities for Black and White Professionals**

The general perception amongst participants seems to be that equal opportunities for black lawyers, in relation to their white counterparts, to open their own commercial law firms do not exist. One respondent recounted her personal experiences in terms of the kind of inequality black legal professionals face when trying to build their own commercial law firms.

*Obviously, the laws are the same in terms of getting identified, registering a company, drafting a business plan, and getting a loan, but from there on the running of the business is very difficult. Like I said, gaining the trust from big companies is very difficult. I can give you an example, with conveyancers it is exactly the same scenario. You know for a person like me to go out there and approach the banks and say I am opening my own practice; I would like to be in the panel and want to do bond cancellations. For me, to get into the panel irrespective of whether they are pushing a certain agenda, having smaller law firms in the panel is very difficult. My competitor, it may be the Chinese would get more work. I have seen that personally. So, you know using that experience, I would say that yes there may be opportunities, but I am not aware of them. It would be very difficult for the next black African to go out there and specialize in mainstream commercial law. If they are connected and work with parastatals, then in that instance they can actually afford to do mainstream work in commercial law.*

*-Female Conveyancer, Level 1 2009.*

#### **2.4.1.3 Mergers as an Opportunity for Black-owned law firms**

A possible opportunity to remain sustainable for black commercial law firms is through merging with large established white firms, who already have the expertise and established networks with clients. To ascertain whether participants view this as an opportunity for long term sustainability; they were asked their thoughts on such mergers. Participants were either strongly in favor and listed its many benefits, or strongly against it and expressed a deep aversion to the idea.

*I think that's a good mix because obviously you introduce a new culture, there could be skills transfer, and there could be a lot of synergies between the two companies to promote and to get the experience. I think it's actually a good thing to do especially in the commercial law field; the larger white firms have been exposed. They have sufficient knowledge and experience and those skills can be transferred.*

*-Male Owner of Commercial Law firm, Level 2 2009.*

However, other participants argue that to some extent it defies the purpose of transformation as some large firms use it as a 'quick fix' to their transformation challenges. Instead of taking the longer root to genuine transformation, large white firms merge with small black firms. As a result, the formerly white firms' numbers look much better in terms of transformation requirements, as the directors of the small firm tend to have senior positions within the newly established firm. Consequently, the pressure on the formerly white firm to transform is much less, and they are no longer obliged to consider race when considering black junior associates for a position. Participants also note other less obvious factors of which the small black firms may not be aware before or after the merger. This mostly relates to possible clients who may have chosen the firm specifically because it is a small black-owned firm or graduates who envisioned working for that firm for the same reasons. Thus, because the smaller firm tends to get 'swallowed up' into the bigger firm, the small firm loses out on possible clients and employees.

*I am against it. I find that it is not a merger, but swallowing of a small practitioner. I have acquaintances or colleagues who have been swallowed by the major firms in Sandton and it irritates me. Big firms started small as the small firms so why are they swallowing them? When they get into major corporations, most of the time you don't have any say, they go back to the stages where they were a candidate attorney. Obviously they are labelled a director, but they don't make any decisions when it comes to even petty cash.*

*-Male Owner of firm/ Managing Director, Level 2, 2010.*

Thus, depending on one's perspective, such mergers could either be very beneficial or lead to the demise of the smaller law firm. However, participants in favor of this idea argue that should the black lawyers no longer be satisfied at the new firm, after the merger, they have the option of moving out. If they choose to do so, the assumption is that they will at least have the skills and expertise acquired while working with the larger firm.

## **2.4.2 Obstacles to building a Commercial Law practice**

### **2.4.2.1 Lack of Relevant Experience**

When asked what the obstacles to building one's own commercial law firm for black lawyers are, all participants mentioned a lack of relevant experience. Both participants and instructors cite this as the most debilitating challenge any person, and specifically black professionals, need to overcome when building a commercial law practice. In fact, both the participants who opened their own practices noted that this challenge persists even beyond the initial phases of starting the firm. Most participants ascribe black lawyers' lack of experience to the lack of exposure to the field. Historically, commercial law was not considered part of the domain of black professionals in legal practice. Black lawyers, in fact, tended to be associated with the fields of Criminal and labour law and consequently tended to limit themselves to these two areas.

*We have confined ourselves to labor, criminal etc, particularly the work where we see someone going to court almost every day. We think being a lawyer is going to court, but you can be a lawyer, working in your office and advising clients from your office. I think that's one of the problems we are having as black people.*

*-Male Contracts Manager, Level 1 2010.*

Due to many black persons' lack of exposure to commercial law, they also tend to be unaware of this field as a possible opportunity of specialisation in law. Unfortunately, most participants also note that their university education tended to be very theoretically based with almost all of them having graduated without having a clear idea of all the different specialties in law. It is only after completion of one's articles, that most lawyers have a good idea of where they want to specialise. Many black lawyers also relate their difficulty in acquiring articles with a large established white-owned law firm in the first instance. Those who did manage to secure a position to complete their articles at one of these law firms notes that the amount of exposure they get tends to be minimal. As a result, they complete their articles, are qualified, but lack the confidence to embark on a career in commercial law.

More than that, black lawyers tend to think that commercial law is a field reserved for large white established firms. This is evidenced by the notion amongst blacks that commercial law can only be done by the large established white-owned firms.

*Exposure is one of the things that are [sic] obstructing us not to go for commercial law practice. We are not exposed to commercial practice information. We view commercial work as work that is being done by the big law firms, that's the only problem. We don't have information. I think the program was an eye opener to us to say that we can do it even though we are not working for those big firms. Again those big firms have got so many departments and there are some services that they are outsourcing.*  
-Male Contracts Manager, Level 1 2010.

Consequently, should a black graduate actually decide that he or she wants to specialise in commercial law; they tend to believe that to get the necessary skills they have to do their articles at a large white established commercial law firm. Considering the difficulties black lawyers experience in being offered articles by these firms and getting significant exposure to commercial law work if they do manage to be appointed, the likelihood of them having the necessary experience after they are qualified is that much less. More than that, participants note that black lawyers within commercial law firms tend to be given lower level unchallenging tasks as opposed to higher level management and conceptual work, their white counterparts are typically given.

*Normally you look at attorneys within specific sections where you have white and blacks you will see that jobs that is given to the white person, the quality is not the same. You (the black lawyer) are more an administrator or a messenger and an admin person in a way. That exposes and will kill you, because when you finish your articles you don't have that confidence to handle big matters because you were not exposed to those things.*  
-Male Course Manager, Level 1 2009.

#### **2.4.2.2 Access to the Right Clientele**

The biggest challenge for participants in acquiring the relevant clientele in commercial law relates to the fact that the field is still dominated by larger more established white-led firms. Due to their limited exposure and experience to commercial law, more often than not, black lawyers also do not have access to the established networks. This notion is supported by findings of research previously done for the ISLP<sup>1</sup>. According to this report, respondents argued that networks (i.e. who you know) largely determine whether you will be briefed for work and whether work will be allocated to you. Respondents also contend that networks receive preference above competence.

*With the recession going on and to attract certain clients you know you have to be able to fish at the right pond I always say, and where you are able to fish at the right pond it takes time. So, yes I think myself and a whole lot of other delegates would consider opening [our own law firms], but due to the practical realities out there it ends up just being a thought.*

*-Female Conveyancer, Level 1 2009.*

Commercial clientele, specifically banks, are not willing to trust small newly established firms, especially blacks, with their work. Paradoxically, even government does not seem to want to give work to small newly established black firms. In fact, one participant noted that opportunities for work still go to the large established white firms. This phenomenon, participants argue, is either due to racial prejudice on the part of white directors or clients or because clients have established long term relationships with the established white firms and feel more comfortable giving work to them. In terms of racial prejudice, participants note that commercial clients tend to have distrust in the ability of black legal professionals to get the job done. This relates to the perception that blacks are not adequately exposed to commercial law and therefore do not have sufficient know-how to do the job as well as their white counterparts would.

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<sup>1</sup> Williams & Lewis. *Perceptions of Career Progression of Black Commercial Lawyers in South Africa*. (2008).

*Really, I don't think they believe in blacks handling serious matters, being directors of companies or their partners, but I'm not sure whether that is really by nature, I'm not sure whether they are trying to empower their people.*

-Male Documentation Officer, Level 1 2009.

*I mean it's mostly corporate entities as opposed to individuals and your blue chip companies. More often than not, they would give instructions to law firms that they trusted for years and it's really about fighting against those types and obviously that mistrust where these clients don't want to trust a small lawyer that is just starting out and they are the desperate and would obviously misappropriate your funds.*

-Female Conveyancer, Level 1 2009.

In accordance with the statements above, one of the instructors had the following to say:

*I think it applies more harshly to black law firms. I think there are smaller white firms that are receiving large instructions soon after they have set up, but that may be accidental. I don't know whether that experience is widespread, but perhaps it will go well with the small firms doing relatively well with big corporate clients.*

-Male Instructor, Level 1 & 2, 2009 & 2010.

#### **2.4.2.3 Entrepreneurial orientation/ Delayed Benefits**

Those participants and instructors, who tend to be more positive regarding the opportunities for building a commercial law firm, tend to see a lack of entrepreneurial orientation amongst black lawyers as an obstacle. They argue that black lawyers are often too afraid of failing to risk giving up their current employment in starting their own firms.



*It's a personality issue, to be entrepreneurial to do that. You have to be brave; you have to have some cash in your pocket while you are setting up. It's like setting up any business. I think it is difficult. Clients do want the experience, they go to the best to fight their case or to draw up the agreement or to help them with this matter where they could make or lose a lot of money.*

-Female Instructor 2, Level 1 &2 2009-2010.

The participant further argues:

*So, for those that come to our course, most are fully qualified. So, for them the anxiety is more in making that shift; a shift in career path, and a lot of them have existing jobs and is paid quite well. They have salaries and they feel safe in their environment. How do you encourage them to take that leap of faith out of where they are where they perceive themselves as stuck and get them into the shape they really want to be in.*

-Female Instructor 2, Level 1 &2 2009-2010.

However, the response from one of the participants below makes it clear that giving up one's job to pursue greater wealth by opening a commercial law practice, is perhaps not as easy as it would appear.

*I was one of the guys who was not really exposed, who didn't have confidence after completing my articles. And I decided to move out. Now it is just a question of as a family man, I need to provide for my family. I was just looking for something which will enable me to put food on the table. Once I see I have covered the ground, I could maybe go back into commercial law and try it and fight.*

-Male Documentation Officer, Level 1 2009.

More than that, unlike their white counterparts who most likely do not have to deal with such expectations, many Africans also bear the burden of having to assist their extended families financially after graduation. They are therefore not able to undergo the process of working themselves up in a law firm, to gain the necessary experience, whilst earning a low salary for such a long time.

#### **2.4.2.4 Initial Funding to Start the Business/ Capital**

Finally, participants list acquiring financing to start the business as a particular challenge for black commercial lawyers. Since, more likely than not, black lawyers tend to come from poor households, the only option available to them to secure funding may very well be a loan from a financial institution. However, participants note that even when applying for a loan from a bank, black legal professionals are bound to face certain challenges. One participant argued that black lawyers applying for a bank-loan in this instance simply have to ensure that they prepare an excellent business plan and utilize their best 'lawyer skills' to convince the banker to grant them the loan.

*Getting a loan or capital from financial institutions is a problem, because normally as a black person you don't have let's say property that you can use as security against the loan needed to start your own firm.*

*-Male Documentation Officer, Level 1 2009.*

Interestingly enough, both the lawyers who started their own law firms had other means of securing the funds to start their businesses, besides acquiring a loan from a financial institution. One of the participants managed to acquire an interest-free loan from his previous employer whilst the other participant had saved enough for him to use his savings as capital to start the business.

## **2.5. CASE STUDY ANALYSIS: EXAMPLE OF A SUCCESS STORY**

In this section, a case study analysis of one of the persons identified as an example of a success story of the course is provided.

In 2009, this participant started his own commercial law firm. Coincidentally, the participant applied and was accepted to participate in the course around the same time as when he started his business. The participant was selected as a success story, because although attending the course did not prompt him to open his own firm, he does ascribe a lot of his success to the knowledge he gained and contacts he made while attending the course.

The participant is a thirty year old African male, who graduated from the University of the Western Cape, in 2002. He only started doing his articles in 2004 as he struggled to get viable articles (close to home). The participant describes the process of doing his articles as very challenging and is grateful for the opportunity given to him by the law firm at which he did his articles. This firm was a medium size white-owned law firm and, contrary to most black lawyers' experiences while doing their articles at such a firm, the respondent notes that he did a substantial amount of work and a lot of it quality work. As a medium law firm, the firm had a few major clients, mostly financial institutions and, as a result, he was given lots of exposure specifically in commercial law.

*It was very beneficial. If I didn't do those articles I wouldn't be where I am today. So in terms of law, in terms of exposure, in terms of networking, it really helped me a lot. It was a great experience to work under that particular firm and I still have contacts and ties with the firm.*

Unlike most black lawyers, the participant also notes that he has an excellent relationship with his former principle. In fact, he mentions that about two years ago, his principle invited him back to the firm, but he declined.

*We have an amazing relationship. I can call him any moment and with his 12 year experience; it is good to have somebody who can give you answers over the phone when you need them.*

In May 2005, he qualified as an attorney, after which he continued with this firm as a professional assistant doing collections and civil litigation. At this point, his intention was to do conveyance work or property law for another year. He started with property in 2005, under the watchful eye of one of the conveyancers at the firm.

The participant notes that while he was working for this firm, he began to feel stagnant financially and in terms of management growth. He also dreamt of starting his own company and wanted to be an instructor in the Law Society. All of this prompted him to resign and start his own firm in July 2009. He invited his former boss and together they started a consortium. He is currently the managing director at his firm, leading the Conveyancing department. The firm does a lot of work for the firm where he was previously employed.

It was at this point that the participant came to know of the commercial law course. While talking to a colleague about his vision to expand, the colleague suggested that he attend the commercial law course as this is his firm's specialisation. When asked about the extent to which he thinks attending the commercial law course contributed to his success, he had the following to say:

*The timing was perfect. The idea to start the business was in February and the idea to attend the course was in March to April. When I started the firm, I started it on the 9<sup>th</sup> of July; I made a joke that my firm was 9 days old in class. I wouldn't say which one started which one. I think they happened at the same time. I think they really boosted me because when the firm started I was already starting the course and I was seeing clients coming to ask me to check contracts.*

Furthermore, the participant notes that the BLA opened doors by exposing him to another mentor, one of the instructors with whom he still keeps in touch. Besides that, he gained invaluable knowledge while attending the course and finds himself applying what he learned daily.

*I think many attorneys in SA want to do commercial law, but they do not know what commercial law is and how to study it. It's a bit of a challenge especially for black attorneys, because you go into a firm and you are just taught how to serve and file and you go to court and you do your job, after judgment and get back to the office. You get admitted and you are actually at a disadvantage, because you know basically nothing about how to draw up or how to negotiate on a contract. Lots of attorneys can't really express themselves in a confident way because they have never been exposed to such an arena...that's why I found that it (attending the course) really raises confidence and black attorneys lack this especially when they come out of criminal courts or out of the road accident fund field of law which mostly pay better.*

Finally, during the course, various black instructors gave inspirational talks about how they managed to succeed in building their own commercial law firms. This inspired him further and made him believe that with hard work and perseverance he can also make a success of his firm.

### 3. CONCLUSION

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From the evidence provided in this report, it is evident that participants and instructors place a high value on the BLA-LEC Commercial Law course. Participants overwhelmingly state that they have gained an enormous amount of knowledge on commercial law by attending the course. This notion is supported by instructors in level two who noted how participants who graduated from level one to level two show a greater understanding of, and ability to implement, the theoretical background they learned in level one. Even though some of the respondents interviewed do not practice commercial law, all respondents mentioned that after attending the course they feel much more confident to express themselves regarding issues of commercial law. Thus, they have no problems explaining complex concepts on the issue to clients or while conversing with others about commercial law topics. Those who do practice, note that they are now much more confident when dealing with commercial law clients and do so daily without having to do as much research as they did before attending the course.

However, very few participants have experienced any significant career changes after attending the course. Most are still in the same position they were in before attending the course, outside of commercial law. However, participants do plan to apply for a job or enter the commercial law field at some time and they all believe that when they do, they will be able to apply what they learned in the course. Those participants who were already practicing commercial law before they attended the course said they made some contacts with others in the field, and in this manner are starting to build networks which has become helpful in their career.

About fifty percent of all participants are not aware of any opportunities to opening one's own commercial law firm. Those who profess to have knowledge in this regard, believe that there are no opportunities for black lawyers wanting their own commercial law firm. In fact, participants note that there are various obstacles preventing black lawyers from building their own firms. In essence these include:

- a lack of relevant experience,
- a lack of access to the right clientele,
- lack of entrepreneurial orientation,
- an unwillingness to wait for the often delayed benefits of building one's own firm and
- Finally, an inability to access initial funding to start the business.

However, as is clear by the case study analysis, success in the field of commercial law does not only depend on participation in the commercial law course. The commercial environment in which black professionals attempt to build their own firms needs to be conducive to their success. With large established white-owned firms still dominating the commercial law sector, the possibility of opening and successfully establishing their firms will remain a daunting task for black legal professionals. However, as illustrated through the example of a success story and comments from other participants, this is not impossible.

Thus, even though the course seems to have been successful in its objective to equip black legal professionals with the necessary skills and knowledge about issues of commercial law, most of them have yet to feel the real effects of this in their professional careers. This is mostly due to societal factors outside of the commercial law course. There is therefore a need to establish a broader framework of interaction for participants to the course and an enabling environment for them to participate successfully in the economic and professional spheres of commercial law.

## 4. REFERENCES

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